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SUBJECT: NIGHT FLIGHTS: FRANKFURT BAN INCONSISTENT WITH BALANCED
APPROACH

REF: MASON-RUSCH-BYERLY EMAILS 03 BERLIN 997 03 STATE 29293 02
FRANKFURT 1549

¶1. Summary and Action Request: In conjunction with issuance of the zoning authorization for a new runway at Frankfurt Airport (anticipated at the end of November, 2007) the Hessen Economic Ministry is expected to mandate a complete or near complete ban on night flights at the airport beginning in 2011. The Hessen Government has made clear that this decision was made at the onset of planning for the new runway in order to placate public protests tied to the airport expansion. Put more bluntly, the Hessian Minister-President has endorsed a political approach of selling to his constituents an expansion of the airport (and daytime flights) by banning night flights.

¶2. Implementation of limits on night-time operations without proper stakeholder consultation and evaluation of the costs, benefits and alternative measures - which appears to be the case in this instance - would be inconsistent not only with the 2001 International Civil Aviation Organization (ICAO) Assembly Resolution (A33-7) on the Policies and programmes based on a "balanced approach" to aircraft noise management, but also with the European Parliament and Council Directive 2002/30/CE on noise management at European airports. Neither the ICAO resolution nor the Directive bars night flight limits as such. While both the Resolution and the Directive respect the right of States to make the ultimate substantive decision, they do mandate a procedure for consideration of proposed operational restrictions at airports that ensures transparency, an opportunity for stakeholders to participate, and decisions based on solid data on costs and benefits. The commitment to the "balanced approach" was underscored in conjunction with the US-EU Air Transport Agreement, which will be applied as of March 30, 2008. Moving down the path of placing operating restrictions at airports in a manner inconsistent with the "balanced approach" and with the effect of limiting U.S. carriers' market access will raise fundamental issues in the US-EU Air Transport Agreement.

¶3. Post is asked to deliver the talking points in paragraph 7 to appropriate German government officials at the federal level, noting USG concern with this decision, and expressing USG willingness to share with Germany USG experience on these matters covering the full range of options to address noise around airports. End Summary and Action Request.

¶4. BACKGROUND: The proliferation of night flight restrictions at European airports is an issue that continues to plague the trans-atlantic aviation relationship. As far back as 2002 just after the EU's adoption of Council Directive 2002/30/CE, Department was aware that actions were under consideration in Germany that would place an absolute ban on night flights at Frankfurt in "exchange" for approval to build a new runway. Over the years, we have periodically registered our concern as plans for the new runway waxed and waned on the horizon (invariably postponed because of political in-fighting). A decision on night flight restrictions is now imminent.

¶5. The "balanced approach" to noise management was the international

answer to the EU's unilateral imposition of de facto operating restrictions on certain "hushkitted" aircraft in Europe. Agreed in ICAO, and then incorporated into EU law, it addresses noise problems at the individual airport level with oversight by the national authority. It is a transparent and consultative process that provides for an assessment of the individual airport noise situation, identification of potential measures available to address a noise problem, and a comparative economic and environmental assessment of those measures. The goal is to choose the most cost effective measure or measures to reduce noise. Germany, along with the rest of the EU member states, was obligated to transpose the Noise Directive, and the balanced approach, into German law.

¶6. To our knowledge, the German government has not undertaken a review consistent with the balanced approach in developing plans for the new runway at Frankfurt. Cargo carriers such as Fedex are shifting operations away from Frankfurt in anticipation of the restrictions. We face similar struggles in Portugal and in Austria. Moves to impose operating restrictions for U.S. carriers that undercut the value of market access in a manner inconsistent with the "balanced approach" raise significant legal and political issues. This issue is likely to figure prominently in the second stage negotiations of the US-EU Air Transport Agreement. It is critical that we continue to lay down firm markers that failure to fully and in good faith comply with the balanced approach is unacceptable.

¶7. BEGIN TALKING POINTS

-- Airport noise is a difficult and contentious subject in countries around the world.

-- With the support of Germany and other EU member states, we reached an historic consensus at the ICAO Assembly in 2001 on a process (the "balanced approach") to address noise around airports.

-- That agreement led to the repeal of the so-called EU hushkits regulation and formed the basis for withdrawal by the United States of proceedings initiated against Germany and other EU Member States under Article 84 of the Chicago Convention.

-- The United States welcomed the commitment of EU member states to the balanced approach in Directive 2002/30/EC.

-- The U.S., the EU, and its member states reaffirmed that commitment in signing the U.S. - EU Air Transport Agreement, noting in the memorandum of consultations (MOC) the importance of international consensus in aviation environmental matters within the framework of the International Civil Aviation Organization (ICAO), and the significance of the unanimous agreement reached at the 35th ICAO Assembly on aircraft noise (Resolution A35-5).

-- Further the MOC noted that, both sides are committed to applying the "balanced approach" principle to measures taken to manage the impact of aircraft noise (including restrictions to limit the access of aircraft to airports at particular times). Both sides also noted that where relevant legal obligations existed, whether at international, regional, national or local level, they also had to be respected in full.

-- We understand that a decision regarding the authorization of a new runway at Frankfurt airport is imminent, and that it may include restrictions or even a prohibition on night-time operations.

-- As noted, Germany is a party to an internationally agreed process to manage airport noise. All noise management actions contemplated should be consistent with the Assembly Resolution, incorporated in the EU Directive, and now anchored in the U.S. - EU Air Transport Agreement.

-- The balanced approach consists of identifying the noise problem at an airport and then analyzing the various measures available to reduce noise through the exploration of four principal elements, namely reduction at source, land-use planning and management, noise abatement operational procedures and operating restrictions, with the goal of addressing the noise problem in the most cost-effective manner. The views of industry stakeholders and the general public must be solicited and evaluated.

-- States are urged not to apply operating restrictions as a first resort but only after consideration of all the elements of the "balanced approach". Further, views of industry stakeholders and the general public must be solicited and evaluated.

-- Political decisions inevitably corrode the integrity of the process and international trust.

-- The U.S. has itself long struggled with difficult airport noise. We have developed a comprehensive "toolkit" of measures to mitigate the impact of noise around airports. That toolkit is not limited to flight bans.

-- We would be pleased to share with you our experience in implementing these measures. We have had fruitful exchanges with other countries through meetings with FAA experts, airport representatives, residents' groups, and airlines in Washington and other U.S. cities. These exchanges present an overview of the various approaches to nighttime noise issues undertaken in the U.S.

-- We would welcome the opportunity to arrange such visits for German officials, including at the state, local and airport level.

-- Let me emphasize that the U.S. is in no way questioning the right of Germany to make the ultimate decision. Rather, we are concerned that imposing operating restrictions without adhering to EU legislation - which reflects ICAO consensus and express understandings of the Parties to the US-EU Air Transport Agreement - will undermine the significant impacts on the aviation industry and the economies that rely on air travel.

-- We urge Germany to adhere to the internationally agreed process on the balanced approach in moving forward with development at the Frankfurt airport.

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